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June 6, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

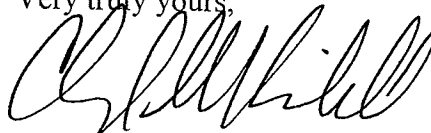
RE: Bay State Gas Company, D.T.E. 05-27

Dear Ms. Cottrell:

On behalf of KeySpan Energy Delivery New England ("KeySpan"), please find attached the Response of KeySpan to the Attorney General's Appeal of Hearing Officer Ruling on Intervention (the "Response") in the above-referenced proceeding. The Response is also being distributed electronically to the Service List in this proceeding.

Thank you for your attention to this matter.

Very truly yours,



Cheryl M. Kimball

Attachment

cc: Service List, D.T.E. 05-27

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Bay State Gas Company

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D.T.E. 05-27

**RESPONSE OF KEYSpan TO ATTORNEY GENERAL'S APPEAL OF
HEARING OFFICER RULING ON INTERVENTION**

This responds to the Attorney General's appeal of the Hearing Officer ruling on June 2, 2005 granting KeySpan Energy Delivery New England¹ ("KeySpan" or the "Company") petition to intervene in this proceeding. For the following reasons, the Attorney General's appeal is without merit, mischaracterizes the facts and should be rejected.

On May 26, 2005, the Company filed a timely petition with the Department of Telecommunications and Energy (the "Department") for leave to intervene as a full party in the above-referenced proceeding. The filing was made pursuant to G.L. c. 30A, § 10, 220 C.M.R. § 1.03 and the Department's Notice of Public Hearing in the proceeding. In support of this motion, the Company demonstrated that it met the Department's standard for full intervention because: (1) it was substantially and specifically affected by the proceeding; (2) it has evidence, knowledge and experience that will help to elucidate the issues of this proceeding and serve the public interest in establishing a clear and thorough record; and (3) its intervention would be consistent with the Department's long-standing practice of permitting the full intervention of utilities in such general rate cases. See

¹ The local gas distribution companies in Massachusetts that operate as KeySpan Energy Delivery New England are Boston Gas Company, Colonial Gas Company and Essex Gas Company.

Attachment A, KeySpan's Petition for Leave to Intervene and Attachment B, excerpts from the procedural conference (Tr. at 15-19).²

Although the Attorney General had assented to the request for full party status when the Company contacted the Attorney General prior to filing,³ it objected to the petition at the procedural conference on June 2, 2005 (Tr. at 13-14). However, rather than address the standards for intervention, which were cited in the Company's petition to intervene (Attachment A, hereto), the Attorney General's basis for objection was the unsubstantiated belief that KeySpan planned to file testimony in the case (*id.*).⁴ This neither refutes, nor even addresses, the Department's standard for intervention or the arguments set forth in the Company's petition. His basis seems to be that if the Company were to present evidence, the proceedings would be complicated and it would interfere with the Attorney General's ability to prepare his case (Attorney General Appeal at 2-3).

Not only does this argument fail to address the standard for intervention, there is no support for the assertion. As KeySpan has demonstrated, it is substantially and specifically affected by the outcome of this proceeding. Nothing the Attorney General argues suggests otherwise. Even if the Company were to offer evidence or to cross-examine a witness (neither of which it intends to do at this time), it would have no

² All transcript citations refer to the transcript of the procedural conference held on June 2, 2005.

³ KeySpan stands by its assertion that it unequivocally sought assent to full party status (Tr. at 15-16). In fact, it was precisely because it intended to request full-party status, as opposed to limited participation, that KeySpan contacted the Attorney General and Bay State (Tr. at 21-22 ("[t]here would be no reason for us to call the Attorney General's office if all we were filing for was limited-participant status"))

⁴ It is ironic that the substantive basis for the Attorney General's objection is that the Company might actually have something worthwhile to add to the case. However, as stated at the procedural conference, the Company has made no decision regarding and has no present intent to file testimony (Tr. at 17). Moreover, the Attorney General was informed of this fact on more than one occasion before the procedural conference.

bearing on the Attorney General's ability to prosecute the case.⁵ If the proffered evidence were not relevant to the case, the Attorney General would be free to object; if it were relevant, the Department's record should not be deprived of the information. Either way, the Attorney General's rights in the case would not be affected. In contrast, if the Company were denied full intervention, it would have no ability to protect and enforce its rights.

The Attorney General's appeal also focuses on the Hearing Officer's finding that the opposition was not timely (Attorney General Appeal at 3-4). Citing the Department's regulations regarding the computation of time, the Attorney General asserts that its June 2, 2005 objection was within the normal five-day time period for such responses. What the Attorney General conveniently omits, is that with specific reference to KeySpan's petition to intervene, the Hearing Officer established a deadline of Friday, May 27, 2005, for all objections. See Attachment C, hereto. To the Company's knowledge, no such objection was filed, and, therefore, the Attorney General's oral objection at the June 2, 2005 procedural conference was indeed untimely.

The Hearing Officer is designated by regulation to conduct the hearing process and make decisions, subject to appeal to the Commission. See e.g., 220 C.M.R. 1.06(6)(a) 220 C.M.R. 1.06(6)(d)3. In this case, the Hearing Officer has exercised her discretion in setting a schedule for objecting to the subject petition to intervene, and properly rejected the Attorney General's objection as untimely. But even if the Department were to consider the merits of the Attorney General's objection, the result

⁵ This argument is not to be taken seriously since the Attorney General raised no issue with the potential for 17 witnesses that may be presented by UWUA Local 273 and MASSCAP and MEDA (Tr. at 43-44).

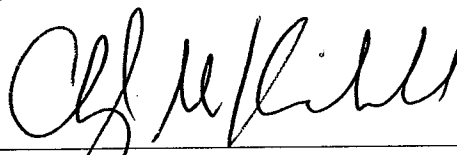
would be the same. He has offered no facts or argument that refute the Company's demonstration that it meets the Department's "substantially and specifically affected" standard for intervention.

WHEREFORE, the Commission should reject the Attorney General's appeal of the Hearing Officer's ruling that granted the Company full-party intervention.

Respectfully submitted,

**KEYSPAN ENERGY DELIVERY
NEW ENGLAND**

By its attorneys,

A handwritten signature in black ink, appearing to read "R. J. Keegan", written over a horizontal line.

Robert J. Keegan
Cheryl M. Kimball
Keegan Werlin LLP
265 Franklin Street
Boston, MA 02110
(617)951-1400

Dated: June 6, 2005

ATTACHMENT A

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Bay State Gas Company)
_____))

D.T.E. 05-27

**PETITION FOR LEAVE TO INTERVENE OF
KEYSPAN ENERGY DELIVERY NEW ENGLAND**

Pursuant to G.L. c. 30A, § 10 and 220 CMR § 1.03, KeySpan Energy Delivery New England¹ ("KeySpan" or the "Company") hereby petitions the Department of Telecommunications and Energy (the "Department") for leave to intervene as a full party in the above-referenced proceeding. In support of this motion, KeySpan states the following:

1. KeySpan is a gas company, as defined in G.L. c. 164, § 1, and is regulated by the Department pursuant to G.L. c. 164, § 1 et seq.
2. KeySpan maintains its principal offices at 52 Second Avenue, Waltham, Massachusetts 02451,
3. On April 27, 2005, Bay State Gas Company ("Bay State") filed a request for approval of a \$22.2 million increase in base rates, a Performance-Based Regulation ("PBR") plan, a steel infrastructure and replacement adjustment ("SIR") and a pension/PBOP reconciliation mechanism.
4. The Department docketed this proceeding as D.T.E. 05-27 and suspended the effective date of the requested rates until December 1, 2005.

¹ The local gas distribution companies in Massachusetts that operate as KeySpan Energy Delivery New England are Boston Gas Company ("Boston Gas"), Colonial Gas Company ("Colonial") and Essex Gas Company ("Essex").

5. The Department may allow any person that “may be substantially and specifically affected” by a proceeding to intervene as a party. G.L. c. 30A, § 10; see also 220 C.M.R. § 1.03(1).
6. When ruling on a petition to intervene, the Department may consider, among other factors, “the nature of the petitioner’s evidence, including whether such evidence will help to elucidate the issues of the proceeding.” Eastern Edison Company, D.P.U. 96-24, at 4-5 (1997).² See also Boston Edison Company, D.T.E. 98-118/119/126, at 9-10 (1999); Western Massachusetts Electric Company, D.T.E. 01-36/02-20, at 6 (2003).
7. KeySpan is substantially and specifically affected by this proceeding because:
 - a. In this proceeding, the Department will investigate and make findings on issues relating to a PBR plan, a pension/PBOP mechanism and the Bay State Steel Infrastructure Replacement (“SIR”) program. The Department’s findings may be applied to the Company in the future. For example, the Department has previously declined to review a gas company’s PBR plan where it is at the same time reviewing another gas company’s PBR plan that “would be instructive for all distribution companies” with regard to the policies, methods, and procedures that may be

² In D.P.U. 96-24, the Department identified factors such as the interests of the petitioner, whether the petitioner’s interests are unique and cannot be raised by any other petitioners, the scope of the proceeding and the potential effect of the petitioner’s intervention on the proceeding. Id. at 4-5.

developed. Fitchburg Gas and Electric Light Company, D.T.E. 02-22, at 3-4 (2003).

- b. In addition, the Department will investigate and make findings on a range of ratemaking and rate design issues that may be applied to Keyspan in the future. See, e.g., Id. (establishing approach for marginal-cost analysis); Berkshire Gas Company, D.T.E. 01-56 (2002) (accounting for gas-marketing costs).
 - c. Keyspan must be permitted to protect its rights with regard to all rate issues that are developed during this rate case that will have precedential effect for Keyspan. Keyspan's interest concerning these issues, and the impact of the Department's decisions on Keyspan's operations, are unique to the Company and cannot be adequately represented by any other party.
8. Keyspan has evidence, knowledge and experience that will help to elucidate the issues of this proceeding and serve the public interest in establishing a clear and thorough record. For example, Boston Gas completed a five-year PBR plan approved by the Department in Boston Gas Company, D.P.U. 96-50 (Phase I) (1996) and is currently operating under a 10-year PBR plan approved by the Department in Boston Gas Company, D.T.E. 03-40 (2003). Essex and Colonial are currently operating under 10-year rate freeze plans, as approved by the Department in Eastern Enterprises/Essex County Gas Company, D.T.E. 98-27 (1998) and Eastern Enterprises/Colonial Gas Company, D.T.E. 98-128 (1999),

respectively. Bay State's PBR proposal includes many elements and characteristics that are common to KeySpan's PBR plans, as implemented. Given KeySpan's extensive experience with PBR plans, it is in a unique position to elucidate these issues with additional evidence. See Interlocutory Order on Appeal of Hearing Officer Ruling, Western Massachusetts Electric Company, D.P.U. 88-250, at 5 (March 21, 1989) (Allowing SESCO motion to intervene as a full party because it is in a unique position to contribute to the development of the record).

9. KeySpan has a pension/PBOP reconciliation mechanism in place that was approved by the Department in Boston Gas Company, D.T.E. 03-40, at 2 (2003). Bay State's PBR proposal includes many elements and characteristics that are common to KeySpan's pension/PBOP reconciliation mechanism, as implemented. The Company has considerable experience, expertise and evidence that it can introduce to contribute to the development of the record on this issue.
10. The Department's longstanding precedent has been to allow full-party intervenor status to sister utilities in gas and electric company cases that involve common issues among other regulated utilities. See Boston Gas Company, D.T.E. 03-40, at (2003) (granting full-party intervenor status to Bay State Gas Company and Berkshire Gas Company in general rate case); Bay State Gas Company, D.P.U. 89-81 (1989) (granting full-party intervenor status to Colonial Gas Company, Boston Gas Company and Massachusetts Municipal Wholesale Electric Company in general rate

case); Massachusetts Electric Company/New England Power Company, D.P.U. 91-114/EFSC 91-24 (1991) (granting full-party intervenor status to Fitchburg Gas and Electric Light Company, Boston Edison Company and Western Massachusetts Electric Company in IRM case); and Western Massachusetts Electric Company, D.P.U. 92-88 (1992) (granting full-party intervenor status to Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company in IRM case).

11. The Company is represented by regulatory counsel who are knowledgeable in the practices and procedures of the Department, and who will not impede the efficient consideration of the case.
12. The Company has contacted counsel for Bay State and the Attorney General concerning its request for full-party intervenor status and both have authorized the Company to represent that there is no objection to the Company's request for full-party intervenor status.

WHEREFORE, KeySpan respectfully requests that the Department grant this petition for leave to intervene and take such other necessary actions as may be appropriate.

Respectfully submitted,

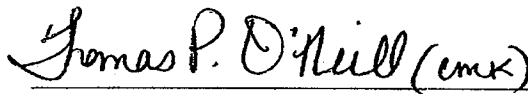
**KEYSPAN ENERGY DELIVERY
NEW ENGLAND**

By its attorneys,



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and



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(781) 466-5136

Dated: May 26, 2005.

ATTACHMENT B

1 wanted to make it clear, we do not agree to their
2 status as a full-party participant in this case.

3 MS. BULGER: And did you have any
4 agreement with respect to NSTAR?

5 MS. REED: My understanding is the same
6 may have been expressed, KeySpan as well as for
7 NSTAR. But we were misled, Your Honor.

8 MS. BULGER: Thank you. Mr. Werlin or
9 Mr. Keegan, do you wish to respond at this time or
10 at a later date in writing?

11 MR. KEEGAN: We'll respond briefly at
12 this time on behalf of KeySpan. Just a couple of
13 points. First, we did contact the Attorney
14 General's office, and I believe it was specifically
15 and directly expressed that we were seeking full-
16 party intervenor status. And honestly, that's a
17 misrepresentation by Ms. Reed. She was not the
18 direct participant in the conversation, No. 1.

19 MS. BULGER: Mr. Keegan, can I
20 interrupt? That's a strong statement. Were you the
21 one that made the statement?

22 MR. WERLIN: No, I was, and I can state
23 unequivocally that we talked about full-party
24 status.

1 MS. BULGER: For KeySpan and NSTAR?

2 MR. WERLIN: Yes.

3 MR. ROGERS: And I can state that we
4 didn't.

5 MS. BULGER: Thank you, Mr. Rogers.
6 Thank you for the statement that you did not.

7 Proceed.

8 MR. KEEGAN: That was No. 1. No. 2 --
9 we also had the conversation with Bay State Gas
10 Company, I'll indicate.

11 With respect to the time for commenting
12 on petitions to intervene, no comments have been
13 filed, and frankly, the period for commenting on our
14 petition to intervene has expired.

15 It comes as news to me that KeySpan
16 intends to submit testimony of witnesses. The
17 company has made no determination on that issue, and
18 I'm the only one that's had conversations with the
19 company. And while we have talked about the issues
20 that have arisen in the case, the company has by no
21 stretch of the imagination come up with a decision
22 or, frankly, even talked about submitting a witness
23 on the bare-steel-replacement program. No such
24 conversations have taken place within KeySpan.

1 Honestly, I don't know where that rumor or
2 impression has been conveyed. But at the present
3 moment, KeySpan has not made a decision on
4 presenting testimony or hasn't fully identified a
5 position that it would take on any of the issues,
6 and is currently in the process of reviewing
7 discovery in order to make that determination.

8 There are obviously a number of issues
9 in this case that are of interest to KeySpan, and it
10 has become clear to us from recent prior rate cases,
11 including the Fitchburg case, Berkshire, and the
12 last KeySpan case, that obligations and
13 responsibilities of utilities for recordkeeping
14 matters are in fact coming out of these cases. We
15 believe that it is important to, A, be able to
16 follow very closely what's going on in these
17 proceedings, identify what kinds of obligations are
18 potentially coming out of a case like this that are
19 in fact being applied to other utilities, and to
20 give us an opportunity to present testimony,
21 evidence, and input on whether those
22 responsibilities of other utilities are in fact
23 appropriate.

24 I think we can shed information and

1 light on those issues when and if they develop. I
2 believe Bay State was a full intervenor and
3 participant in KeySpan's rate case, and it's
4 appropriate, given the obligations that are coming
5 out of these cases and their impact on other
6 utilities, that KeySpan be allowed full intervenor
7 status here.

8 MS. BULGER: Mr. Werlin, do you have
9 anything to add for NSTAR?

10 MR. WERLIN: Just quickly; I won't
11 repeat everything that Mr. Keegan said. It
12 obviously applies to NSTAR as well.

13 But just briefly: Procedurally, the
14 discussions we had with the Attorney General were on
15 full-party status, No. 1. No. 2, it is my
16 understanding that the hearing officer established a
17 time for commenting on these intervention motions
18 and that time has passed. And I guess thirdly,
19 there was no mention about NSTAR filing testimony.
20 So I guess somebody is going to have to start that
21 rumor before we can deny that one, too.

22 I guess the point is that these
23 companies are affected by the outcome of these
24 cases, and the Department has granted intervenor

1 status in the past. Different companies may or may
2 not want to be a full party to a case, and that's
3 their prerogative. But that doesn't undermine the
4 fact that companies are entitled to be and should be
5 allowed full-party status.

6 MS. BULGER: Mr. Harak?

7 MR. HARAK: I'd like to comment, but not
8 interrupt your flow.

9 MS. FRENCH: Madam Hearing Officer?

10 MS. BULGER: Hold on one second.

11 Do you have a comment on this matter of
12 KeySpan and NSTAR intervention?

13 MR. HARAK: Yes. On behalf of Local
14 273, we don't object to the intervention, but we
15 would strongly urge the Commission to consider a
16 couple of points.

17 First, this appears to be one of the
18 most voluminous cases that the Department has dealt
19 with, in terms of the number of witnesses it's going
20 to have to get through. And even the schedules that
21 have been proposed by any party are going to be hard
22 to meet.

23 Second, although I can't say that the
24 Department has never allowed a utility in as a full

ATTACHMENT C

From: Bulger, Caroline [Caroline.Bulger@state.ma.us]
Sent: Friday, May 27, 2005 2:20 PM
To: charak@nclc.org; klionsh@nu.com; pfrench@nisource.com;
alexander.cochis@ago.state.ma.us; aoconnor@aimnet.org; drosen@keeganwerlin.com;
ndecter@plre.com; kpenders@negasco.com
Subject: 05-27: reminder

Please let me know by e-mail or call (305-3579) today if there are any objections to any intervenors who have filed recently and whose motions remain outstanding. These include, but not limited to, Keyspan, NSTAR, MassPower, and Ma Oilheat.